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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 24 1992

Federal Communications Commission
Office of the Secretary

EX PARTE OR LATE FILED

In the Matter of:

MOTOROLA SATELLITE
COMMUNICATIONS, INC.

Request for Pioneer's Preference
to Establish a Low-Earth Orbit
Satellite System in 1610-1626.5 MHz
Band

ET Docket No. 92-28

PP-32

MOTION TO ACCEPT LATE FILED COMMENTS

Constellation Communications, Inc. ("CONSTELLATION™")
by its counsel, respectfully requests that the Commission grant
this Motion to Accept Late Filed Comments regarding the
above-captioned proceeding. The attached filing was delivered
to the Commission on April 23, 1992 as required by the
Commission's rules. As a result of confusion by the messenger
service it was date-stamped at the Managing Director's office.
The Secretary's office made counsel aware of this problem on
April 24, 1992 and indicated that the Secretary's office has
restamped the pleading for April 24, 1992. In light of this

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situation and the fact that there will be no prejudicial impact if this pleading is accepted, CONSTELLATION respectfully requests that the Commission grant this Motion.

Respectfully submitted

A handwritten signature in dark ink, appearing to read "Robert A. Mazer". The signature is fluid and cursive, with the first name "Robert" being more prominent.

CONSTELLATION COMMUNICATIONS, INC.

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April 24, 1992

CERTIFICATE OF SERVICE

I, Robert A. Mazer, hereby certify that a copy of the foregoing Motion to Accept Late Filed Comments of Constellation Communications, Inc. was sent by first class United States mail, postage prepaid, this 24th day of April 1992, to the following:

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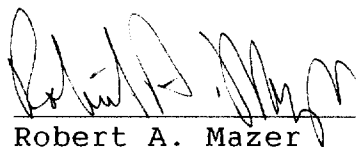
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	ET DOCKET NO. 92-28
CONSTELLATION COMMUNICATIONS, INC.)	PP-29
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MOTOROLA SATELLITE)	PP-32
COMMUNICATIONS, INC.)	
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Requests for Pioneer's Preferences)	
to Establish Low Earth Orbit)	
Satellite Systems in the 1610-)	
1626.5 MHz and 2483.5-2500 MHz Bands))	

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OFFICE OF MANAGEMENT DIRECTOR

REPLY COMMENTS

Constellation Communications, Inc. ("Constellation"), by its attorneys, hereby files these Reply Comments to the Comments filed by Motorola Satellite Communications, Inc. ("Motorola") on April 8, 1992 in the matter captioned above.

Constellation is one of five applicants proposing a low earth orbit ("LEO") satellite system in the 1610-1626.5 MHz and 2483.5-2500 MHz bands allocated to the radiodetermination satellite service ("RDSS"), as well as to the mobile satellite service (MSS) by the 1992 World Administrative Radio Conference ("WARC").. Constellation has proposed an innovative LEO system that allows multiple LEO systems to share the same band, and has proposed a licensing scheme that allows the Commission to continue to apply its current competitive satellite licensing policies to LEO technology in the RDSS bands.

I. Motorola Should Not Receive a Pioneer's Preference Because It has Not Demonstrated That Its System Is Economically Viable; and The Regulatory and Political Barriers to Entry Raised By Its System Design Make Implementation Impractical.

Motorola's initial application estimates a total system cost of approximately \$3.2 billion. Given the complexity of the Iridium system, the actual cost may approach two to three times this amount by the time it is fully implemented as described in the application. Considering that the expected system lifetime is only five to seven years, the annual revenue requirements to justify this investment will be enormous. The economic risks of the LEO satellite program described in Motorola's application are extremely high when all of the variables are considered. These risks must reflect such factors as the fact that the market is new to LEO satellite services, the absence of user terminal production and associated distribution/servicing networks, and the high technical risks of the Iridium system design. It is far from clear how Motorola will be able to achieve the kind of market penetration required to generate the necessary revenues.

The concerns over financial viability have international political implications as well. One issue is the prospect of using Iridium's intersatellite call routing system to bypass national networks. Another worldwide concern is that a

single system such as the Iridium system would limit the opportunities for participation by countries and their telecommunications entities, and that as a consequence their rights to access the spectrum and the mobile communications marketplace would be denied.¹

Finally, Motorola's proposed bi-directional use of the 1616-1626.5 MHz band will require country by country coordination which will be extraordinarily difficult in light of the high power density levels used in the Iridium system. These difficulties will be compounded by the basic conflict between operation of the Iridium system and the planned expansion of the Russian Glonass system to overlap the frequencies Motorola plans to use. These issues may render implementation of the Iridium system infeasible from a practical standpoint.

II. Motorola Should Not Be Awarded A Pioneer's Preference Because There Is Nothing Novel About It

Motorola claims that its plan to provide hand-held portable mobile communications with worldwide interconnectivity is a novel service offering. In fact, aside from Motorola's ability through intersatellite links to provide coverage of remote, mid-ocean locations, its Iridium system would contribute nothing that is not also proposed by the other applicants in this proceeding.

¹ These concerns are reflected in Resolutions COM5/8 and COM5/11 of the 1992 WARC.

All of the LEO applicants propose systems capable of supporting the same basic type of hand-held user terminals. In addition, Constellation and other LEO applicants propose worldwide coverage and interconnectivity through the public switched network. The decision not to use intersatellite links was based on practical business and technical considerations. Adequate service to aeronautical and maritime users in mid-ocean regions where no earth station is present can be provided by current geostationary satellite systems. Any novelty in such areas is far outweighed by the cost savings and reduced technical risk of not interlinking the satellites for call routing.

Further, while Motorola has patents on certain technologies it plans to use for Iridium, none of this patented technology is required or sought by any of the other LEO system applicants. Motorola's patents cover only limited aspects of its LEO system and have nothing to do with the merits of one technology for LEO systems versus another. Motorola's patents are therefore irrelevant to the consideration of a Pioneer's Preference in this proceeding. Moreover, the testing that Motorola has done does not appear to address the key elements which Motorola claims as the innovative aspects of its system. Propagation tests and demonstration of link closures are routine tests that would be performed by any system operator.

Moreover, all of the technology required to establish an economically efficient LEO system for voice, data and

positioning was developed, tested and applied in telecommunications systems long before Motorola conceived of Iridium. In fact, the use of satellite constellations to provide global coverage date back to 1963 with the U.S. Government's implementation of its Initial Defense Satellite Communications Program. While there have been significant refinements since then, and many of these are applied by Motorola in its Iridium proposal, none of the technologies to be used by Motorola can legitimately be considered novel.

Each of the examples of novel technologies cited by Motorola in its pleadings can be traced to earlier applications. Hand-held user terminals were developed in the cellular industry and modifications for satellite use were pioneered by Geostar Corporation and Defense Systems, Inc. Onboard switching technology was developed in NASA's Advanced Communications Technology Satellite (ACTS) program and for the latest generation of INTELSAT satellites. Intersatellite links were developed and are being used today in NASA's Tracking and Data Relay Satellite System (TDRSS). Handoff from one satellite to another is simply an extension of cellular technology, with the satellite as the cell site. Similarly, Motorola's bi-directional frequency use is no more than a fast, automated version of "push to talk" techniques that have been employed by communications systems for decades. Multiple beam antennas have been used by many satellite systems, Motorola's beam hopping is no more than a version of satellite switched, time division multiple access

which the Commission first saw in the Advanced Westar applications a decade ago. Power management is an inherent part of satellite systems operations, and doppler positioning is an obvious fallout of the LEO application itself.

Finally, Motorola claims that it has spent more than \$50 million since 1987 in research, development and promoting the advancement of the Iridium system design. It is not clear how much of this money has gone to engineering and how much to lobbying. In any event, these "pioneering efforts", as Motorola refers to them, have resulted in a system design that locks out any competition from the outset by requiring exclusive use of the best portion of RDSS spectrum. Such a design is contrary to long standing Commission policy, and Motorola's expenditures of time and resources should not be given weight by the Commission in evaluating its request for a pioneer's preference.

III. The Commission Should Not Use Its Pioneer's Preference Procedures to Select a "Winner" Among Competing Technologies

Throughout this proceeding, it has been made clear that the Commission is being presented with two basic competing technologies to implement LEO systems in the bands above 1 GHz.² Motorola proposes a time division duplex ("TDD"), time

² This same type of issue was presented by competing types of frequency division multiple access ("FDMA") and code division multiple access ("CDMA") LEO system designs in the bands below 1 GHz, and the Commission declined to favor one design approach over the other.

division multiple access ("TDMA") system design, while the other LEO applicants propose spread spectrum, code division multiple access ("CDMA") designs. The Motorola design approach requires an exclusive, world wide frequency assignment because the high power density levels required by a TDD/TDMA system precludes any other user to operate on the same frequency. On the other hand, the spread spectrum CDMA designs permit both multiple LEO systems and other radio services to operate in the same band.

This distinction prevents the Commission from granting Motorola a pioneer's preference without in effect selecting Motorola's TDD/TDMA technology as the "winning" LEO technology. In the case of CDMA systems, the Commission could grant one of the applicants a preference in the form of an early grant without precluding a later grant of other CDMA applications, particularly if it extends its current RDSS coordination procedures to LEO systems.³ The same is not true of Motorola's TDD/TDMA technology where the grant of a pioneer's preference is tantamount to a denial of the other applications for the frequencies assigned to Motorola because the Motorola system design does not permit sharing. There would be at least two major problems with such a decision by the Commission.

First, the Commission's licensing procedures should not be used to select among competing technologies, particularly

³ The Commission has apparently decided to encourage coordination among LEO applicants in bands below 1 GHz through the establishment of an industry advisory committee. See Public Notice, _____.

if the technology to be selected precludes sharing or competition. As a purely technical matter, both TDD/TDMA and CDMA may be feasible, and both may be used by LEO systems to provide voice, data and position determination to users with hand-held terminals. But whether one or the other technology will become dominant in the marketplace will depend on a wide range of other factors that determine market acceptance of a new service. The Commission's rulemaking and licensing procedures can not be used as a surrogate for such marketplace decisions, and the Commission has correctly refrained from intruding itself into similar controversies in other services, such as the current debate between TDMA and CDMA for cellular systems. The Commission should similarly refrain from granting Motorola a pioneer's preference that would effectively select Motorola's TDD/TDMA technology as the winning technology for LEO systems over CDMA technology.

Second, even if the Commission sought to select Motorola's TDD/TDMA technology as a "winner", it could not do so in the context of granting Motorola a pioneer's preference. Because Motorola's system precludes sharing⁴, the Commission must first compile an adequate record on which to base its decision to exclude other users from the band to

⁴ As Constellation demonstrated in its March __, 1992 Comments in this proceeding, Motorola's proposal that it be assigned the top 10.5 MHz of the RDSS L-band, with the remaining 6 MHz assigned to CDMA systems, is tantamount to denial of the CDMA applications because of the imbalance between uplink and downlink spectrum and because of the inability to access the upper part of the RDSS L-band to assist in sharing the band with other users to which the band is allocated.

be assigned to Motorola.⁵ However, there are still many unresolved questions of fact concerning the feasibility and superiority of the Motorola system which the Commission must address before it could legally select Motorola's TDD/TDMA approach as the "winning" technology. Consideration of these complex and contentious issues can not be done in the context of a pioneer's preference. Unlike CDMA technology, where the grant of a pioneer's preference does not preclude later grant of competing applications in the same band, the Commission can not pick Motorola's mutually exclusive TDD/TDMA design without first addressing all outstanding questions of fact in a manner that preserved the "Ashbacker" hearing rights of the other applicants.⁶ The Commission can not preserve these legal rights of competing applicants in the context of its consideration of Motorola 's request for a pioneer's preference.

Conclusion

The applications of Constellation and the other CDMA applicants offer the Commission the opportunity to promptly

⁵ Moreover, since Motorola is claiming that its global coverage capabilities form one of the bases for a pioneer's preference, the Commission must also consider the foreign policy implications of selecting a technology that would effectively sanitize the band on a world wide basis because of the high power density levels employed by the Motorola system.

⁶ Where the Commission has found it necessary to establish detailed technical specifications for a new service, such as for high definition television, the Commission has embarked on lengthy rulemaking proceedings, aided by the establishment of advisory committees and an exhaustive testing program, before making a selection.

implement LEO technology in the RDSS bands in a way that allows marketplace forces to determine the optimum cost and size of the systems to be implemented. All of the LEO systems, including Motorola's, seek to provide the same basic services to handheld terminals. However, Motorola's TDD/TDMA system design presents high technical, financial and political risks and precludes any other user from operating on the frequencies assigned to it. The Commission is not in a position to select Motorola's technology to the exclusion

of CDMA technology by granting Motorola a pioneer's preference. The Commission must resolve all of the outstanding questions of fact surrounding the alleged feasibility and superiority of the Motorola system. Constellation is confident that such a detailed review will demonstrate the clear preference that the Commission should afford CDMA systems that allow multiple LEO systems to operate in the RDSS bands and continue the Commission's long standing policy preference for licensing policies that promote competition in the supply of satellite communications services.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Robert A. Mazer", is written over the typed name.

CONSTELLATION COMMUNICATIONS,
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April 23, 1992.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

MOTOROLA SATELLITE
COMMUNICATIONS, INC.

Request for Pioneer's Preference
to Establish a Low-Earth Orbit
Satellite System in 1610-1626.5 MHz
Band

To: Chief Engineer

ET Docket No. 92-28

PP-32

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OFFICE OF MANAGING COUNSEL

MOTION TO STRIKE

Constellation Communications, Inc. ("CONSTELLATION") by counsel, hereby requests that the Commission strike the "Supplement to Request for Pioneer's Preference" submitted by Motorola Satellite Communications, Inc. ("Motorola") on April 10, 1992. If the Commission is unwilling to strike this pleading, a public notice must be issued that establishes a date for interested parties to comment on this filing.

On July 30, 1991, Motorola submitted to the Commission a Request for Pioneer's Preference for its proposed Iridium low-Earth Orbit ("LEO") satellite system.^{1/} This request

^{1/} Request for Pioneer's Preference, Motorola Satellite Communications, Inc. filed July 30, 1992.

cited - intersatellite links and bidirectional use of the spectrum - as the distinct technical innovations associated with the Iridium system. On March 9, 1992 the FCC issued a Public Notice that established April 8, 1992 as the date for submission of comments on the Motorola Request. Pursuant to this Public Notice CONSTELLATION and the other LEO applicants submitted comments on Motorola's July 30, 1992 request. Two days later, on April 10, 1992 Motorola submitted to the Commission its "Supplement to Request for Pioneer's Preference." This was precisely nine months and eleven days after Motorola filed its original "Request for Pioneer's Preference." This was the final day for submission of new requests for pioneer's preference to operate a LEO system in the RDSS bands (1610-1626.5 MHz and 2385.5 MHz to 2500 MHz).^{2/} Certainly, no party to this proceeding has been provided an opportunity to comment on this filing.

The Motorola supplemental filing should be stricken because it is ex parte. Any written presentation not served on the parties to a restricted proceeding is a direct violation of

^{2/} On March 11, 1992 the Commission released a Public Notice that established April 10, 1992 as the final day for filing additional Pioneer's preference requests with regard to the establishment of Low-Earth Orbit ("LEO") systems proposing to operate in the 1610-1626.5 and 2483.5 MHz bands. ("RDSS" bands). Public Notice, MIMCO No. 22205, released March 11, 1992.

the Commission ex parte rules and must be rejected.^{3/} This proceeding became ex parte on April 8, 1992 when CONSTELLATION, TRW, Loral/Qualcomm and Ellipsat formally opposed the Motorola Request for Pioneer's Preference.^{4/} The confidential material contained in the April 10, 1992 filing has not been served on CONSTELLATION or the other applicants. The supplemental filing therefore must be stricken. Any other result would undermine the integrity of the Commission's proceedings and deny other parties the fairness, impartiality and due process guaranteed by the Commission's rules.^{5/}

The fact that Motorola submitted its supplemental filing on April 10, 1992 makes it clear that Motorola has conceded that at a minimum it must be treated as a new filing. This new material could have a direct bearing on the Commission's consideration of all the pending requests for pioneer's preference to operate LEO satellites in the RDSS bands.^{6/} It is important to note that CONSTELLATION received its copy on April 15, 1992.

^{3/} See 47 C.F.R. § 1.1202(b).

^{4/} See 47 C.F.R. § 1.1208(c).

^{5/} See 47 C.F.R. § 1.1200.

^{6/} CONSTELLATION has in a separate pleading filed today opposed to Motorola's request for confidential treatment.

This new filing cannot be considered as a mere adjunct to Motorola's July 30, 1992 filing. This is because it requests a pioneer's preference for a number of purported new innovative technologies that were not identified previously. All interested parties must have an opportunity to digest and comment on the contentions made in this filing. Certainly, if CONSTELLATION and the other parties seeking pioneer's preference in this proceeding do not have an opportunity to comment, their interests will be severely prejudiced. This impact is increased dramatically by the Motorola request for confidentiality of some of the material contained in the filing. It would be an intolerable situation if the Commission were to make a finding on a pioneer's preference based on material that was not available to the public.

In order to avoid this result the Commission must either strike the entire Motorola supplemental filing or treat it as a new submission and place it on public notice.^{1/} Additionally, the Commission must reject Motorola's request for confidential treatment and either return the confidential material to Motorola or have it placed in the record.

^{1/} This public notice period must be at least 30 days as required by Sections 1.402 and 1.405 of the Commission's Rules 45 C.F.R. §§ 1.402 1.405.

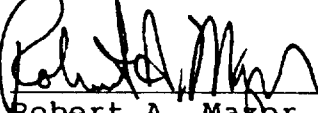
As the Commission examines this issue it must recognize that the timing of Motorola's submission of its supplemental filing two days after the comments were due on its Request for Pioneer's Preference was clearly by design. It merely represents another cynical attempt by Motorola to manipulate the process in this proceeding. Under these circumstances, the Commission must take whatever steps necessary to insure that a full and fair hearing is provided to all the parties to this proceeding. Otherwise, the rights of the other applicants will be irreparably harmed.

CONCLUSION

For these reasons, CONSTELLATION urges the Commission to strike the Motorola "Supplement to Request for Pioneer's Preference." At a minimum, the Commission must place this filing on public notice to allow all parties the opportunity to comment.

Respectfully submitted,

CONSTELLATION COMMUNICATIONS, INC.



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Counsel to
Constellation Communications, Inc.

April 23, 1992

CERTIFICATE OF SERVICE

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MOTOROLA SATELLITE
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Request for Pioneer's Preference
to Establish a Low-Earth Orbit
Satellite System in the 1610-
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**OPPOSITION TO REQUEST
FOR CONFIDENTIAL TREATMENT**

Constellation Communications, Inc. ("CONSTELLATION"),
by its attorneys, hereby submits its opposition to Motorola
Satellite Communications, Inc.'s ("Motorola") Request for
Confidential Treatment submitted on April 10, 1992. Motorola
submitted this request in conjunction with Motorola's pioneer
preference request referenced above. Constellation requests
that the Commission reject Motorola's request for
confidentiality and present Motorola with the option of opening
the material for public inspection or reaffirming its request
for the Commission to return the materials.

Motorola submitted this confidentiality request to include materials contained in its April 10, 1992 supplement to its previously filed Request for Pioneer's Preference. Motorola stated that the information submitted to the Commission "includes highly confidential, sensitive and company proprietary information."^{1/} This includes "information concerning pending applications, preliminary results of experiments and field test, a videotape of a voice simulation using the IRIDIUM system, and a computer diskette containing copyrighted software which simulates operation of intersatellite links."^{2/} Motorola's request for confidentiality is based on its view that this material "constitutes trade secrets and commercial, financial or technical data which must be guarded from Motorola's competitors."^{3/}

CONSTELLATION objects to the Motorola request based on two grounds. First, the Commission must not base its licensing decisions involving hotly contested mutually exclusive applications on information not available to all applicants. Second, CONSTELLATION submits that the Commission's recent

^{1/} Letter from Philip L. Malet to Donna R. Searcy dated April 10, 1992.

^{2/} Id.

^{3/} Id.

pioneer's preference rules do not envision the use of confidential information in making pioneer's preference determinations.

The Motorola pioneer's preference proceeding may not be viewed independently but must be viewed as a part of Motorola's application to construct and operate the IRIDIUM satellite system. Motorola, however, is only one of five applicants for licenses to operate low earth orbit satellite systems in the bands previously licensed for the radio determination satellite service. Given the mutual exclusivity of these applications, however, grant of a preference to Motorola would contravene the Commission's licensing responsibilities. Moreover, use of confidential information, not available to competing applicants, to grant a preference which would prejudge a contested licensing issue would be wholly inappropriate and an affront to Commission rules and policies.

As an additional matter, the Commission must recognize that the pioneer's preference decisions do not envision the use of confidential information.^{4/} Requests for pioneer's preference are adjudicative proceedings under the Commission's

^{4/} See Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services, 6 FCC Rcd. 3488(1991).